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# Exhibit A

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# Tab 7



Deposition of:  
**Lorin Hitt, Ph.D.**

*December 22, 2021*

In the Matter of:

**Won, Wesley et al. v. General Motors,  
LLC**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

REMOTE PROCEEDINGS OF THE  
VIDEOTAPED DEPOSITION OF LORIN MOULTRIE HITT, PH.D.  
WEDNESDAY, DECEMBER 22, 2021

\*\*\*CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER\*\*\*

REPORTED BY NANCY J. MARTIN  
CSR. NO. 9504, RPR, RMR

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF MICHIGAN  
3                   SOUTHERN DIVISION

4  
5                   WESLEY WON, et al., individually      ) Civil Action No.  
6                   and on behalf of all others                ) 2:19-cv-11044  
7                   similarly situated,                        )  
8    )  
9                   Plaintiffs,                                )  
10    )  
11    )  
12                   v.    )  
13    )  
14                   GENERAL MOTORS, LLC,                    )  
15    )  
16                   Defendant.                                )  
17    -----)

18    - - -  
19    WEDNESDAY, DECEMBER 22, 2021  
20    - - -  
21    

22    \*\*\*CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER\*\*\*  
23  
24  
25

26    Videotaped Remote Deposition of LORIN MOULTRIE  
27    HITT, PH.D., beginning at 10:10 a.m., before Nancy J.  
28    Martin, a Registered Merit Reporter, Certified  
29    Shorthand Reporter.

1 Q. And what counsel?

2 A. Kirkland & Ellis counsel, Mr. Pixton

3 Mr. Ribot.

4 Q. And when you said "research team," who is  
5 that?

6 A. Those are folks at Cornerstone Research.

7 Q. And who are those folks at Cornerstone  
8 Research?

9 A. So the -- it would be Samid Hussain, Anna  
10 Shakatko, Collin Shanks, Fang Guo were the core team,  
11 and there may have been others involved at various  
12 times.

13 Q. Okay. Before I go further, let me make sure  
14 I understand all the spellings of their names.

15 I think I got Collin Shanks. Is it S-c-h  
16 or S-h?

17 A. S-h, I believe.

18 Q. Okay. And is Samid Hussain S-a-m-i-d,  
19 H-u-s-s-e-i-n?

20 A. a-i-n, I believe.

21 Q. Okay. S-a-m-i-d?

22 A. S-a-m-i-d.

23 Q. Okay. I missed the third name that you  
24 mentioned.

25 A. Anna Shakatko I believe was the third one.

1 Q. Can you spell her name.

2 A. A-n-n-a, S-h-a-k-a-t-k-o, I believe. I may  
3 be getting that wrong.

4 Q. And I think the third -- or the last name was  
5 Fang Guo.

6 A. Fang, F-a-n-g, G-u-o.

7 Q. Okay. And they are all folks at Cornerstone?

8 A. Yes.

9 Q. And when you said "research team," did they  
10 work with you on your report in this case?

11 A. They performed analysis and research tasks at  
12 my direction, yes.

13 Q. So they did work with you on your report on  
14 this case?

15 A. Yes. As I described, they performed research  
16 at my direction.

17 Q. Okay. What -- do you know the educational  
18 background of Samid Hussain?

19 A. I think he's a Ph.D. economist.

20 Q. And what about Collin Shanks?

21 A. That, I don't know.

22 Q. What about Fang Guo?

23 A. I also don't know.

24 Q. What about Anna Shakatko?

25 A. I believe she's an M.B.A., but I'm not sure.

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1           Q. Okay. Did you in this case load up in Our  
2         Studio and run the code?

3           A. Yeah. I ran one of the modules, but it was  
4         the research team that was primarily responsible for  
5         executing the code and doing the various research  
6         tasks related to the code.

7           Q. Okay. So who at the research team  
8         specifically worked on this code? Because as we all  
9         kind of know already, there's some questions about the  
10        code for the simulation. I'd like to know who was  
11        doing that work so I can ascertain what their  
12        background was and the time they spent on this  
13        project.

14           Can you give me that person's name?

15           MR. PIXTON: Object to the form.

16           THE WITNESS: So as I described earlier, the  
17         person who was -- at least I would identify as most  
18         responsible for the simulation code would be Collin  
19         Shanks who was working on that. He likely had other  
20         people assisting that I did not interact with. So I  
21         don't know for certain.

22           BY MR. McNAMARA:

23           Q. Do you know how many likely people he had  
24         interacting with him on that?

25           MR. PIXTON: Object to form.

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1                   THE WITNESS: I don't know.

2                   BY MR. MCNAMARA:

3                   Q. Do you know what their educational  
4                   backgrounds were?

5                   MR. PIXTON: Object to form.

6                   THE WITNESS: I don't know.

7                   BY MR. MCNAMARA:

8                   Q. Do you know how much time he spent working on  
9                   the market simulation code?

10                  A. I don't know.

11                  Q. Do you know how much time he spent working on  
12                  the market simulation that Mr. Eichmann did in this  
13                  report?

14                  A. No, I don't know. I generally don't know how  
15                  Cornerstone allocates their time.

16                  Q. With regards to hedonic analysis, I think you  
17                  think -- let me try that again.

18                  With regards to hedonic analysis and Fang  
19                  Guo, do you know if Fang Guo had anyone supporting on  
20                  that analysis?

21                  MR. PIXTON: Objection. Form.

22                  THE WITNESS: So I would believe so, but I  
23                  don't know for certain.

24                  BY MR. MCNAMARA:

25                  Q. Okay. Do you know how much time Fang Guo

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1           spent on the hedonic analysis part of Mr. Eichmann's  
2           report?

3           A. No. As I said earlier, I generally don't  
4           know Cornerstone's time allocation.

5           Q. Okay. What, if anything, did Samid Hussain  
6           do with respect to supporting you in your expert  
7           report in this case?

8           A. He participated in discussions with the team.

9           Q. Any specific part of your report you can  
10          point to Mr. Hussain's contribution on?

11          MR. PIXTON: Object to the form.

12          THE WITNESS: I think I characterized it  
13          broadly, which is that he was involved in discussing  
14          the report at a high level.

15          BY MR. McNAMARA:

16          Q. You did characterize it broadly, that's why I  
17          went more specifically.

18          What specifically, if anything, did Samid  
19          Hussain, who is a Ph.D. in economics and the only one  
20          whose background you really understood, what did he do  
21          on this case?

22          MR. PIXTON: Object to the form.

23          THE WITNESS: I believe I answered that  
24          question, which is he participated in discussions  
25          about the -- regarding the report across all the

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1 areas.

2 BY MR. McNAMARA:

3 Q. Okay. And I think you said Anna Shakatko was  
4 an M.B.A.?

5 A. I believe so.

6 Q. So what -- can you tell me how Anna supported  
7 you in your report in this case?

8 A. She was also involved in broader discussions  
9 of the case and involved in managing some of the other  
10 folks.

11 Q. Anything else than broader discussions?  
12 Discussions as to what? Where was her M.B.A. at all  
13 used?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So when working with the  
16 research team, there are certain people who are  
17 working on specific tasks and certain people who are  
18 responsible at a higher level. Anna is one of the  
19 folks responsible at a high level that would have  
20 participated in discussion, probably more related to  
21 the market simulation, but also more broadly.

22 BY MR. McNAMARA:

23 Q. Do you know how much time Ms. Shakatko worked  
24 on the case?

25 A. No. As I said before, I generally don't know

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1 Cornerstone's time allocations.

2 Q. Okay. And aside from the folks you named --  
3 Samid, Collin, Fang, and Anna -- who else, if anyone,  
4 at Cornerstone do you recall supported you in your  
5 work in this case?

6 MR. PIXTON: Object to the form.

7 THE WITNESS: There were -- at times there  
8 were analysts who were involved. I don't recall their  
9 full names, but people I met along the way.

10 BY MR. McNAMARA:

11 Q. Can you give me any of the first names or  
12 last names, whatever part of the name you remember?

13 A. I think one of the analysts was Levi  
14 Monihume, I believe, if I'm getting that correctly.

15 Q. Anyone else?

16 MR. PIXTON: Same objection.

17 THE WITNESS: There were others, but I don't  
18 recall. I don't recall their names right now.

19 BY MR. McNAMARA:

20 Q. Can you give me a number of people at  
21 Cornerstone that assisted you along the way on your  
22 expert report in this case?

23 MR. PIXTON: Object to form.

24 THE WITNESS: Not until I can -- I recall  
25 perhaps two or three more people that I interacted

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1       with at some point, but that wouldn't be -- that's an  
2       estimate. That's not a hard number.

3       BY MR. McNAMARA:

4           Q. You've worked with Cornerstone over the years  
5       in expert work; correct?

6           A. Yes.

7           Q. How long have you worked with Cornerstone  
8       doing expert work in support -- sorry, in supporting  
9       your expert work litigation?

10          A. 20 -- approximately 20 to 22 years, something  
11       like that.

12          Q. And is Mr. -- well, let's try it this way:  
13       Did you work with anyone on this project who you've  
14       worked with in the past?

15           MR. PIXTON: Object to form.

16           THE WITNESS: Yes.

17       BY MR. McNAMARA:

18          Q. Who is that?

19          A. Samid.

20          Q. And I think -- go ahead. Sorry.

21          A. Samid, Anna. I believe Levi had been  
22       involved in a previous case as an analyst. Oh,  
23       actually, I forgot somebody. Todd Kumar was involved  
24       in this too, and I've worked with him a fair amount in  
25       the past.

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1           the 8-speed transmissions?

2           A. I believe it was within a few months before,  
3           but I don't really recall. I don't believe I have a  
4           record of when that was.

5           Q. Fair to say you didn't do any work on this  
6           matter before October 5, 2021?

7           MR. PIXTON: Object to form.

8           THE WITNESS: Yes, that's correct. Other  
9           than review the Complaint, I didn't do any billed work  
10          on this case. It is possible I reviewed the Complaint  
11          before I discussed it with the Cornerstone folks, but  
12          no active work on it.

13          BY MR. McNamara:

14          Q. Do you know -- fair enough. Do you know if  
15          Cornerstone had begun work on this matter before  
16          October 5, 2021?

17          MR. PIXTON: Objection. Form.

18          THE WITNESS: That, I don't know. I think --  
19          I suspect I interacted with them and -- you know, sort  
20          of understanding the case. I don't know if they were  
21          actively doing anything else.

22          BY MR. McNamara:

23          Q. When did you start working on your report in  
24          this case?

25          A. Mid-October, shortly after the retainer

Page 23

1 to go back going off only this -- the first time I had  
2 a discussion with Cornerstone on this was the 15th,  
3 anything other than scheduling.

4 BY MR. MCNAMARA:

5 Q. Okay. Do you know what, if anything, had  
6 been done by Cornerstone with respect to this case by  
7 the time they sent you the materials that you just  
8 described?

9 MR. PIXTON: Object to form.

10 THE WITNESS: No. I don't know what they  
11 might have been doing.

12 BY MR. MCNAMARA:

13 Q. Well, you said they worked with you at your  
14 direction. What did they do before you started  
15 directing? Do you know?

16 MR. PIXTON: Object to form.

17 THE WITNESS: That, I don't know. The only  
18 thing I'm aware of was the preliminary discussion that  
19 I mentioned before that might have occurred several  
20 months before and, you know, collecting the materials  
21 and making them available.

22 BY MR. MCNAMARA:

23 Q. For the work on this case, did Cornerstone  
24 work solely at your direction, or do you know if they  
25 did additional work that you may not have directed?

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1 MR. PIXTON: Objection to form.

2 THE WITNESS: I don't know.

3 BY MR. MCNAMARA:

4 Q. Do you know if Cornerstone has done any  
5 analysis, simulations, hedonic regressions that  
6 they've done on their own and not at your direction?

7 MR. PIXTON: Object to the form.

8 THE WITNESS: I don't know the scope of  
9 Cornerstone's involvement beyond my own report.

10 BY MR. MCNAMARA:

11 Q. Okay. Are there any analyses that were done  
12 by Cornerstone that you're aware of, whether you  
13 directed or not, that are not reflected in your  
14 report?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So I asked them to do a variety  
17 of things. The ones that are relevant got  
18 incorporated in the report.

19 BY MR. MCNAMARA:

20 Q. Okay. All right. We'll get to your report  
21 in a second. I just want to find out, though, are  
22 there any things they did that you may not have asked  
23 them to do that you became aware of that are not in  
24 your report?

25 MR. PIXTON: Object to form.

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1                   THE WITNESS: Not that I'm aware of. I don't  
2 know if they did other things related to my report or  
3 not. I do understand they're supporting another  
4 expert, but I wasn't involved in that in any way.

5                   MR. MCNAMARA: Okay. Let me -- with respect  
6 to Exhibit 316 -- why don't I just show you. Just to  
7 finish out, can I ask you to look at Exhibit 317.

8                   (Deposition Exhibit 317 was marked for  
9 identification.)

10 BY MR. MCNAMARA:

11 Q. The first line where it says, "Discussed  
12 Hedonic/follow up," can you tell me who you discussed  
13 it with?

14 MR. PIXTON: Object to form.

15 THE WITNESS: Again, I don't recall. I would  
16 suspect it would be Fang, but I'm not sure. That  
17 would most likely be the case.

18 BY MR. MCNAMARA:

19 Q. Can you tell me what you mean by "Worked with  
20 Eichmann simulation, 3.4 hours"?

21 MR. PIXTON: Object to form.

22 THE WITNESS: That may have been some of my  
23 running the simulation and working through the code on  
24 my own.

25 BY MR. MCNAMARA:

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1 BY MR. McNamara:

2 Q. Well, let me ask the question your way then.  
3 In the 37 times you've testified, can you tell me how  
4 many times you've responded to a damages model in a  
5 class action?

6 A. I can go through it.

7 (The witness reviewed the document(s).)

8 THE WITNESS: I count somewhere around 18.

9 BY MR. McNamara:

10 Q. In those 18 times you responded to a class  
11 action model, did you ever agree that a class action  
12 damages model was sufficient?

13 MR. PIXTON: Object to the form.

14 THE WITNESS: So I don't think it's generally  
15 my assignment to make the final determination, but in  
16 all those cases I was asked to evaluate damages  
17 models, and I found issues with them that I described  
18 in the reports I provided.

19 BY MR. McNamara:

20 Q. When you say "found issues," what do you  
21 mean?

22 A. So either they were inconsistent with  
23 economics or did not lead to the conclusions that they  
24 were trying to draw or could not be used to give an  
25 individualized number for damages given the way that

1           they were set up. Those are some examples.

2           Q. Have you ever testified on behalf of  
3           consumers in a class action case where you found a  
4           model that answered all the questions and didn't  
5           reach, as you call it, an individual number for  
6           damages that were acceptable to your understanding of  
7           economics?

8           MR. PIXTON: Object to the form.

9           THE WITNESS: So I evaluated the models in  
10          these cases. I think I raised issues with all of  
11          them. There are portions of the reports that I may  
12          have disagreed with, but in general, I think the  
13          models that I've seen and have been asked to address  
14          did not, in general, demonstrate a common method that  
15          could be used to assign individual damages in the ones  
16          I was asked to evaluate.

17          BY MR. McNAMARA:

18          Q. Have you ever been asked to put forward a  
19          damage model for consumers in a class action?

20          A. I've never developed the damages model in a  
21          consumer class action.

22          Q. Have you ever affirmatively put forth a  
23          damages model in any case?

24          MR. PIXTON: Object to form.

25          THE WITNESS: I have some -- in some of the

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1 Q. Sure. My question --

2 I'll do it, Nancy --

3 -- is would you agree with me that this was a  
4 report you made to respond to a damage model that  
5 Dr. Eichmann had proffered -- Mr. Eichmann had  
6 proffered regarding a price premium damage model for  
7 purchases of ATVs with a heat defect?

8 MR. PIXTON: Object to form.

9 THE WITNESS: Yes, I believe I reference it  
10 as an overcharge. I can look through it and see if a  
11 price premium language is also used, but that would be  
12 consistent.

13 BY MR. McNAMARA:

14 Q. Would you agree with me that some of the same  
15 statements you make about differentiated products and  
16 differentiated consumer preferences and price  
17 variation that you made in this expert report  
18 regarding Mr. Eichmann's model in Polaris you make  
19 again here in this case regarding GM?

20 MR. PIXTON: Object to the form.

21 THE WITNESS: I'd have to align the  
22 statements up generally, but yes, price dispersion  
23 does exist for both the ATV in the new and used  
24 vehicle market. And, you know, prices are negotiated  
25 and individualized due to some similar factors because

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1           they're negotiated with a dealer. And I think those  
2           points would be potentially common, although the  
3           details of them are a bit different.

4           BY MR. MCNAMARA:

5           Q. Would that point be potentially common in  
6           any -- purchase of any consumer product that there be  
7           individual negotiation price?

8           MR. PIXTON: Objection form.

9           THE WITNESS: Generally, no. So, for  
10          example, retail price -- you go to Walmart. You pay  
11          whatever Walmart charges. But if we're talking about  
12          things that are subject to individual negotiation,  
13          yes, that's the case. So that would be -- many  
14          different kinds of vehicles would be subject to  
15          individual negotiation, at least at the time when you  
16          could negotiate.

17           BY MR. MCNAMARA:

18           Q. So basically -- I'm sorry. Go ahead.

19           A. ATVs, automobiles I think certainly would be  
20          the case. There's a lot of consumer products where  
21          there's little or no negotiation or where there's  
22          negotiation -- where negotiation isn't necessarily the  
23          norm.

24           Q. So -- I'm sorry. I didn't mean to cut you  
25          off. Mattresses, beds, would those also be one where

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1 you'd have individual negotiation price?

2 MR. PIXTON: Objection. Form.

3 THE WITNESS: So that might be a situation  
4 where you're blending -- again, I haven't fully  
5 evaluated the mattress market, but that may be a  
6 situation where you're blending both negotiated and  
7 non-negotiated prices together.

8 BY MR. McNAMARA:

9 Q. And trucks I think is another one you've  
10 testified. When you're purchasing large diesel  
11 trucks, there would also be price negotiation there  
12 too; right?

13 A. Yes. And a few different kinds as well  
14 because you're dealing with different kinds of market  
15 participants.

16 Q. Can I ask you -- well, first of all, so if  
17 that's the case that there's going to be, because of  
18 the differentiation of products and price  
19 negotiations, wouldn't that be the case that you can  
20 never have a class action involving automobiles?

21 MR. PIXTON: Object to the form.

22 THE WITNESS: I don't know if I'd reach that  
23 conclusion, but I can't evaluate the all possible ways  
24 of going at this. But it does certainly make it more  
25 challenging when you have preferences and individual

1 negotiations, that combination makes it more  
2 challenging to evaluate individual impact because you  
3 are in a situation where consumers can -- if they have  
4 different preferences, they actually can act on them,  
5 which is not the case for all goods. I don't know  
6 what methods would be appropriate. But that's  
7 certainly going to be a problem that you're going to  
8 have to overcome in some way.

9 BY MR. MCNAMARA:

10 Q. Well, let me ask, Dr. Hitt, having done this  
11 now for several years, what, if any, automobile case  
12 would you ever see could have a damage model given  
13 that there's always going to be different  
14 heterogeneity in preference and different prices  
15 because customers can negotiate?

16 MR. PIXTON: Object to the form.

17 THE WITNESS: So I can't anticipate the way  
18 one might develop a damages model in here, but damages  
19 models predicated on one or small sets of market  
20 prices I think in a negotiated market with individual  
21 preferences I think are less likely to be plausible.  
22 I evaluated a specific one here. There might be  
23 circumstances where that is not a strong a criticism.

24 But, again, I can't know all the possible  
25 ways one might go about doing so, but it's certainly a

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1 problem with the method to try to assign either one,  
2 for example, diminution in value or a very small set  
3 of changes in market prices when you know there's  
4 customer heterogeneity.

5 BY MR. MCNAMARA:

6 Q. Can you think of one method that could be  
7 used for determining damages to consumers of  
8 automobiles that would meet your standard?

9 MR. PIXTON: Object to the form.

10 THE WITNESS: So I don't think I have a  
11 standard. I'm pointing out the economic property of  
12 these markets that would have to be incorporated or  
13 should be incorporated in a model unless it could be  
14 demonstrated that it's not sufficiently large to  
15 matter. In these cases I think it does. I don't know  
16 and I wasn't asked to determine is there an  
17 alternative model. So I can't say.

18 BY MR. MCNAMARA:

19 Q. What do you mean "not sufficiently large to  
20 matter"? What did you mean by that?

21 A. So if, for example, there was -- as an  
22 empirical matter there was uniformity in price despite  
23 heterogeneity in preference, that would be more  
24 plausible. In general, that's not the case here, but  
25 there could be, for example, negotiated markets within

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1 some segments that had more uniformity in price. But  
2 that does not appear to be the case here, and it's not  
3 been the case in other situations that I've evaluated.

4 Q. Is it ever the case that there's uniformity  
5 of price for automobiles?

6 MR. PIXTON: Object to the form.

7 THE WITNESS: Not that I personally observed.  
8 But, again, with a small enough sub segment there  
9 could be more uniformity with the sub segments. But,  
10 again, it would be these very, very broad large  
11 numbers of purchasers, multiple vehicles. It's  
12 certainly less likely.

13 BY MR. McNAMARA:

14 Q. Let me ask you if you could look at  
15 Exhibit 319, Paragraph 25, of the report you did in  
16 the Polaris case starting with "These types of  
17 conditions."

18 A. Paragraph 25?

19 Q. Yeah. It's on page 13 of 152.

20 (The witness reviewed the document(s).)

21 THE WITNESS: Okay.

22 BY MR. McNAMARA:

23 Q. And do you see where you write in the second  
24 sentence, "A differentiated product is one that has a  
25 variety of attributes (or 'features') intended to

1 appeal to consumers with different preferences"?

2 A. Yes.

3 Q. And can I ask you to look at your report that  
4 you have in front of you? I think you brought it with  
5 you. But it's Exhibit 318, paragraph 132, page 61 of  
6 193, if you're looking at the PDF.

7 A. I'm sorry. What page?

8 Q. Page 61 of 193.

9 A. Got it. Thank you. Okay.

10 Q. Do you see in paragraph 132 where you're  
11 talking about non-differentiated products that you  
12 state in the third sentence, "A differentiated product  
13 is one that has a wide variety of attributes (or  
14 'features') intended to appeal to consumers with  
15 different tastes and preferences"?

16 A. Yes. I like that phrase because I think it's  
17 a compact treatment of what a differentiated product  
18 is.

19 Q. Right. And given that we're not dealing with  
20 the Model T, all cars are differentiated products;  
21 correct?

22 MR. PIXTON: Object to form.

23 THE WITNESS: I think cars generally could be  
24 considered differentiated products, so they would have  
25 these potentials. They could have -- they would have

1 transmissions. That's one of the difficulties of  
2 identifying the issue of transmissions, and I discuss  
3 that also in my report.

4 But, yes, you can -- in general, with  
5 differentiated products you get to observe what  
6 consumers pay. They negotiate over what they pay.  
7 What comprises the components that add up to what they  
8 pay can vary across consumers.

9 So when faced with, for example, a  
10 disclosure, there may be some consumers who react a  
11 lot and some consumers who react very little because  
12 they're not as concerned about it. That's just a  
13 characteristic of differentiated products that you  
14 need to accommodate in any attempt to try to value a  
15 feature in a complex product.

16 Q. We'll do one more, and then we'll take a  
17 break.

18 Can I ask you to look at the Polaris report,  
19 paragraph 61.

20 A. Okay.

21 Q. In paragraph 61 when you're talking about the  
22 transaction prices -- the actual transaction prices  
23 vary even for similarly identical vehicles, and you  
24 write in paragraph 61, "This price variation  
25 establishes that there are individual characteristics

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1           specific to each transaction that determine the  
2           transaction price, which are difficult or impossible  
3           to capture by a uniform or common model that would  
4           apply to all Sportsman ATVs."

5                         Did I read that correctly?

6           A. Yes.

7           Q. Could I ask you to look at paragraph 160 in  
8           your current report in the GM case. The almost  
9           penultimate sentence in your report that begins, "This  
10          price variations establishes that there are individual  
11          characteristics specific to each transaction that  
12          determine the transaction price of a given putative  
13          Class Vehicle, which are difficult to capture by  
14          common model that would apply to all putative Class  
15          Vehicles or even all putative Class Vehicles of the  
16          same model model year"; correct?

17           A. Yes. That's an empirical fact with these  
18          markets that I'm summarizing in this paragraph and the  
19          following several pages of charts that basically  
20          illustrate this in both reports.

21           Q. So it's your opinion in Johannesson, as it  
22          is in this case, that differences between customer  
23          knowledge, customer prices paid, and customer  
24          preference make a class-wide damages model -- preclude  
25          a class-wide damages model; is that fair?

1 MR. PIXTON: Object to the form.

2 THE WITNESS: So I wouldn't say it that way.

3 I'd say that -- so a couple things. First of all,  
4 preferences and information and transaction  
5 circumstances yield prices. So the price variation is  
6 observable. The preferences and information may be  
7 less though because they're connected, but they're  
8 not, by themselves, acting independently.

9 But the second point is that I think in both  
10 these cases the idea that there is one or a very  
11 limited number of price changes that can be -- that  
12 accurately characterize any shift in demand in a world  
13 which has all these properties is not likely to  
14 capture the market properly.

15 BY MR. McNAMARA:

16 Q. Let me try it this way: Fair to say, in both  
17 the Johannesson case and in the GM case, you cited to  
18 the differentiation of the products, the preferences  
19 of buyers, the differences in price, and the  
20 differences in customer knowledge as a basis to oppose  
21 the damage model set out by Mr. Eichmann?

22 MR. PIXTON: Object to form.

23 THE WITNESS: Again, subject to the  
24 discussion I had earlier about some of these things  
25 are based on graphs and some of these are based on

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1 theory, but the -- but, yes, in both cases I identify  
2 differentiation -- factors that affect differentiation  
3 and price dispersion as issues that would affect the  
4 plausibility of the models put forth by Mr. Eichmann  
5 because they have -- they reduce the change in prices  
6 to one or a very limited set of possible reactions.

7 BY MR. McNAMARA:

8 Q. With regards to the opinion you just recently  
9 testified on in Takata, did you also cite to  
10 differentiation in the products, the customer  
11 preferences, price variation, and customer knowledge  
12 as a basis to oppose the damage model put forth by  
13 that plaintiff's expert?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So I believe, again, Takata --  
16 the Takata case is a vehicles case. It has the same  
17 properties that would lead to that. And I did both --  
18 there's both a theoretical and empirical discussion on  
19 price dispersion and why that makes it challenging to  
20 assign a single market price change.

21 BY MR. McNAMARA:

22 Q. And in every automobile case you've been  
23 involved with have you cited to price variation,  
24 differentiation of products, differentiation of  
25 customer preferences and customer knowledge as a basis

1 to oppose the damage model proffered by the  
2 plaintiff's expert?

3 MR. PIXTON: Same objection.

4 THE WITNESS: I'd have to look back and see  
5 all of these reports, but certainly those factors in  
6 the auto cases -- are present in the auto cases that  
7 I've been involved in, and they would lead to a  
8 conclusion that a single or very small subset of  
9 market price changes would not accurately capture  
10 changes in behavior.

11 But, again, the details of each circumstance  
12 are different. The analysis I did did vary across all  
13 these reports. But as a general rule, differentiation  
14 and product dispersion are features of these markets  
15 that make it difficult to limit any kind of market  
16 price reaction to a single or small set.

17 MR. MCNAMARA: Five minutes okay, Allen?

18 MR. PIXTON: Yeah. That's fine by me so long  
19 as you're actually here in five.

20 MR. MCNAMARA: Yeah. I'm trying to get us  
21 going for Nancy's sake. So five.

22 THE VIDEOGRAPHER: Please stand by. The time  
23 is 11:35 a.m. We're going off the record.

24 (WHEREUPON a recess was taken from 11:35 a.m.  
25 to 11:44 a.m.)

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1 Q. What do you mean by corporate surveys?

2 A. Asking people factual questions about what  
3 they do.

4 Q. Can I ask you to look at paragraph 8? You  
5 mention your experience in the automobile industry.

6 A. Yes.

7 Q. Is it fair to say that the experience you  
8 mention here is solely as a defense expert opposing  
9 class actions as they pertain to automobiles, diesel  
10 trucks, and ATVs?

11 MR. PIXTON: Object to the form.

12 THE WITNESS: So I don't view that  
13 characterization as opposing necessarily, but these --  
14 I think these are -- yeah. This paragraph is  
15 specifically about litigation matters. I have done  
16 other work that's related to auto industry, advising  
17 students and such on their Ph.D. dissertations, for  
18 example. But this paragraph is related specifically  
19 to litigation.

20 BY MR. MCNAMARA:

21 Q. And the work you've done in the automobile  
22 industry, you've always appeared on behalf of an OEM,  
23 a manufacturer; is that fair?

24 A. I think I've been -- I don't know if I've  
25 been retained by, but Bosch has been available. So

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1           they're a parts supplier. I think other than that  
2           exception it's been auto manufacturers or ATV  
3           manufacturers, Polaris, if you count that as the auto  
4           industry, and truck manufacturers if you're --  
5           depending on how you define the boundary.

6           Q. Can you give me an estimate of the total  
7           number of hours you've worked on cases involving  
8           automobiles?

9           A. I have no idea.

10          Q. Is it in the hundreds? In the thousands?

11          A. Over the last 20-something years certainly  
12          hundreds. I don't know whether it would creep into  
13          thousands or not.

14          Q. Okay. Let me ask -- I'm going to be brief on  
15          this one, I promise. Can I take you to paragraph 19  
16          where you write, "I am being assisted in this matter  
17          by staff at Cornerstone Research who are working at my  
18          direction."

19           Is that the people we've already talked  
20          about?

21          A. Yes.

22          Q. Okay. Do you know collectively how many  
23          hours they have worked on this project?

24           MR. PIXTON: Object to form.

25           THE WITNESS: No. As I mentioned before, I

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1           defect. You need to establish that that is indeed  
2           common if you're going to assign everybody the same  
3           number, because if they're not common, the same number  
4           will overcompensate some people and undercompensate  
5           others.

6           BY MR. MCNAMARA:

7           Q. And this paragraph you have here right  
8           afterwards -- sorry, several sentences right after, I  
9           just read it, that "automobiles are differentiated"  
10           and it ends with "This makes any assumption of a  
11           uniform impact or any assumption that all putative  
12           Class members were damaged by some average amount (if  
13           any) invalid, and thus individualized inquiry will be  
14           necessary to determine whether each putative Class  
15           member was impacted and separate damages."

16           That would apply to every single automobile  
17           class action, would it not?

18           MR. PIXTON: Object to the form.

19           THE WITNESS: I think we discussed this  
20           earlier. I think the differentiated product  
21           characteristics do make it more plausible than not  
22           that they're individualized. That may very well  
23           extend to other automobile class actions, but I can't  
24           speak for every one that could ever occur.

25           BY MR. MCNAMARA:

1           Q. And you've made this point in every  
2         automobile class action you've been involved with; is  
3         that fair?

4           MR. PIXTON: Form.

5           THE WITNESS: Yes. I've done the analysis in  
6         the context that I've been asked to review, both  
7         theoretically and empirically, and reached that  
8         conclusion.

9           BY MR. McNAMARA:

10          Q. That also includes the truck cases you're  
11         involved with; correct?

12          A. I'd have to look through all the reports to  
13         see if it's always there. The same principles apply.  
14         I don't recall whether I did the empirical analyses in  
15         some cases.

16          Q. You made the same point in the Johannesson  
17         versus Polaris case; correct?

18          A. That's correct. We were just looking at  
19         that.

20          Q. Let me take you to page 11 of your report  
21         now, the hedonic regression starting with Roman  
22         numeral 6. Did you write this portion of your report  
23         by yourself, or did you have any assistance from folks  
24         at Cornerstone?

25           MR. PIXTON: Objection. Form.

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1           Q. And did you -- this reply, did you work on it  
2       with folks at Cornerstone?

3           A. Yes. Same research team.

4           Q. When you say "same," are they the same four  
5       or five names before, or were there any ones in  
6       particular?

7           A. It's the same general group. Again, I don't  
8       know who did all -- you know, some of the analysis  
9       might have been directed by the Cornerstone folks to  
10      somebody else, but it was the same group that worked  
11      with me on my original report.

12          Q. Okay. Then you see in paragraph 3 -- well,  
13       just so I know, is this -- is there anything else that  
14       you were preparing in response to Mr. Eichmann's  
15       response, or is this it?

16          A. So I don't have any plans to prepare anything  
17       else. Things could come up today, but I have no  
18       active work right now other than this deposition.

19          Q. Fair enough. In paragraph 3 where you write,  
20       "As just one example, for 2016, 2017, 2018 and  
21       Cadillac CTS vehicles with 8 cylinder 6.2L,  
22       supercharged induction engines, the additional data  
23       show that all vehicles were sold with an at-issue  
24       transmission, whereas Eichmann classified no vehicles  
25       as being part of the Class."

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1                   Do you see that?

2                   A. Yes.

3                   Q. Do you know how many of those vehicles, the  
4 raw number we're talking about?

5                   MR. PIXTON: Object to form.

6                   THE WITNESS: I can find it out. I don't  
7 have it off the top of my head.

8                   BY MR. McNAMARA:

9                   Q. Does 810 sound about right?

10                  A. Let's find out.

11                  Q. Sure. Just so I know, what are you looking  
12 at?

13                  A. My report.

14                   (The witness reviewed the document(s).)

15                  BY MR. McNAMARA:

16                  Q. Do we need to go off the record?

17                  A. Maybe. Hang on a second here. I can't  
18 remember whether I redlined it in the report or in the  
19 appendix. It's taking a bit of time. I can't find it  
20 right this second.

21                  Q. Well, I'd say two things: One, you can  
22 accept as a hypothetical the 810, or we should go  
23 offline and you could --

24                  A. Let's accept -- I have yet to find the page.  
25 I'll accept it as a hypothetical and carry on.

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1 Q. I think we talked earlier in terms of the  
2 number of impressions were 5,548,082?

3 A. Something like that, yes.

4 Q. Would you agree that 810 out off 5,548,000  
5 impressions, that's going to be a -- that's  
6 .015 percent of the vehicles in the analysis?

7 MR. PIXTON: Object to the form.

8 THE WITNESS: If the calculation's -- if the  
9 810 is correct. Yeah, about .015.

10 BY MR. MCNAMARA:

11 Q. Would you think that's a consequential issue  
12 regarding the 810 vehicles that you point out here  
13 would still be classified as not being part of the  
14 class?

15 MR. PIXTON: Objection. Form.

16 THE WITNESS: So the point of this is not to  
17 say how large these errors are. It's just to point  
18 out these corrections do not address the fact that  
19 some class vehicles are improperly classified.

20 BY MR. MCNAMARA:

21 Q. Okay. Let me ask you about the statement a  
22 little further down. Do you see where you write in  
23 paragraph 3 that, regarding the Chevy -- the 2019  
24 Chevrolet Silverados, that even though the additional  
25 data indicate that nearly 25,000 2019 Silverado

1        vehicles were sold with the at-issues, he did not  
2        update his code to include that?

3            A. I'm not sure that's exactly what that says.  
4            It just says he continues to -- the summary is he  
5            continues to misclassify that particular make and  
6            model year as --

7            MR. PIXTON: Objection. Form.

8            THE WITNESS: -- as entirely non-class  
9            vehicles. But that's not correct, at least according  
10           to the other data set.

11           BY MR. McNamara:

12           Q. And do you know how many -- from the data  
13           set, how many 2019 Silverados were gas-powered  
14           8-cylinder 5.3 liter engines?

15           MR. PIXTON: Object to form.

16           THE WITNESS: Again, not off the top of my  
17           head.

18           BY MR. McNamara:

19           Q. Do you know, of the count of them that were  
20           gas-powered, 8-cylinder 5.3 liter engines, that had  
21           either an AL45 or AL90?

22           MR. PIXTON: Object to form.

23           THE WITNESS: Again, I could look up the  
24           numbers in the source data sets, but I don't have  
25           those off the top of my head.

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1 BY MR. McNamara:

2 Q. Could it be 212,000?

3 A. I don't know the number. I could take your  
4 word for it. I could potentially look it up to find  
5 the page that I was hunting for before, but I don't  
6 have that number off the top of my head.

7 Q. So if it turns out about 212,000 of these  
8 Silverados were the 8 cylinder 5.3L -- 8L transmission  
9 and 113 were the 2019 Silverados without the 8L  
10 transmissions, would you agree with me that about  
11 35 percent or so of the Silverados in this particular  
12 model did not have the at-issue transmission, 113,326?

13 MR. PIXTON: Object to form.

14 THE WITNESS: So I don't know. I'd have to  
15 take your representation of the input numbers. I'm  
16 not even sure I follow your calculation. I think the  
17 statement simply says that there exists 25,000  
18 vehicles that are misclassified that we were unable to  
19 identify even after the correction.

20 BY MR. McNamara:

21 Q. Okay.

22 A. If you want me to work through the math, I  
23 can.

24 Q. Let me try to make it simpler because I think  
25 this one you can work through. Even my feeble brain

1 can do it.

2                 If we're talking about 12,000 vehicles,  
3 again, out of 5.5 million vehicles in regression, is  
4 that about a .22 percent number of impression we're  
5 talking about?

6                 MR. PIXTON: Objection. Form.

7                 THE WITNESS: 12,000 out of 5.5 million?

8 BY MR. McNamara:

9                 Q. Yeah.

10                A. It's going to have a leading 2, and it's  
11 going to be a small number. It's possible.

12                Q. Sitting here today, how do you think, if at  
13 all, that the reclassification of the 12,209 vehicles  
14 out of 505 million observations would affect, if at  
15 all, the regression results?

16                MR. PIXTON: Object to form.

17                THE WITNESS: I don't know. The objective is  
18 not to say -- is not to identify the effect on a  
19 regression. The analysis in this paragraph is simply  
20 to document ongoing misclassification errors that were  
21 reduced -- or result from the changes Mr. Eichmann  
22 made in his classification code.

23 BY MR. McNamara:

24                Q. It kind of sounds like Cornerstone were going  
25 "You screwed up. You screwed up, and you screwed up."

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1                   THE WITNESS: Not on these two. Sorry. Not  
2 on these two.

3                   BY MR. McNAMARA:

4                   Q. Let me go back to your report, and I'm on  
5 page 25, paragraph 62 where we're talking about I  
6 think depreciation.

7                   A. Page 25?

8                   Q. Yeah.

9                   A. Okay.

10                  Q. Page 25.

11                  A. In what paragraph?

12                  Q. Well, in the sentence you're talking about I  
13 think price depreciation and then compared to  
14 benchmark vehicles.

15                  A. Okay.

16                  Q. Can you tell me what method you're using to  
17 analyze alternative depreciation here?

18                  MR. PIXTON: Object to the form.

19                  THE WITNESS: So the method is just -- first  
20 I depict the data, and I depicted both for this  
21 particular one and all the others so you can see, just  
22 from the simple presentation of the data, that these  
23 vehicles are not consistently at the bottom of their  
24 group, and then it bounces around over time. So there  
25 doesn't seem to be any systematic relationship

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1           apparent when you compare these against the relevant  
2           control groups.

3           BY MR. McNamara:

4           Q. Are you using a multivariate regression  
5           analysis?

6           A. No. I'm presenting the data as is available  
7           just looking at the depreciation for each model  
8           individually. And there's like 40 others in the  
9           appendix that -- where we do each one individually.

10          Q. Right. And for these -- the analysis that  
11         you're doing here, is it fair to say you don't control  
12         for mileage. Fair?

13          MR. PIXTON: Object to form.

14          THE WITNESS: It's presenting it -- there's  
15         no controls in here. It's looking at the population  
16         of these vehicles relative to other vehicles at the  
17         time and showing that they're within -- sometimes  
18         high, sometimes low, sometimes at the bottom,  
19         sometimes at the top, and it doesn't seem to be  
20         particularly related to the share of at-issue  
21         transmission.

22          BY MR. McNamara:

23          Q. And you said there's no control here. It  
24         says you don't have control here for -- I'll wait for  
25         it -- geographic location of sale, sale month and

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1 year, sale type, body type, engine cylinders, engine  
2 liters, trim attributes like extended cab, induction  
3 type, dealer sale or sale type repossession, none of  
4 those are controlled for in here?

5 MR. PIXTON: Object to form.

6 THE WITNESS: So I believe certain  
7 vehicles -- let's see. So certain vehicles are --  
8 certain portions of the data set are removed, salvaged  
9 vehicles, so forth. But it's a presentation of the  
10 average values of these vehicles over time relative to  
11 their stated MSRP. It's a different kind of analysis.

12 BY MR. McNAMARA:

13 Q. Okay. In terms of answering my question,  
14 because you threw in things I didn't ask, the items I  
15 listed that weren't controlled -- mileage, geography,  
16 sale months, sale type, body type, engine cylinders,  
17 engine liters, trim attributes like extended cab --  
18 would you agree none of those are controlled for in  
19 the analysis you're doing here or discussing here on  
20 page 25?

21 MR. PIXTON: Object to form.

22 THE WITNESS: I'd have to go through that  
23 list very specifically, but I can tell you what this  
24 is simply a presentation of the average values of  
25 each at-issue vehicle compared to its benchmarks. And

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1 so in that sense there are no controls and there's no  
2 intention of putting in controls because it's a  
3 presentation of the data so you can see how these  
4 vehicles behave relative to others in the similar  
5 segment.

6 BY MR. MCNAMARA:

7 Q. Did you do this, or did someone at  
8 Cornerstone do it?

9 MR. PIXTON: Object to form.

10 THE WITNESS: So I requested that they  
11 present the data, just show a simple data presentation  
12 of how these vehicles compared. The implementation of  
13 that was done by Cornerstone.

14 BY MR. MCNAMARA:

15 Q. And who at Cornerstone?

16 MR. PIXTON: Same objection.

17 THE WITNESS: I don't know.

18 BY MR. MCNAMARA:

19 Q. Can I take you back a little bit to page --  
20 well, let me ask you the question because we talked  
21 about omitted variable bias earlier.

22 In light of what you discussed, aren't you  
23 omitting a ton of variables in this analysis?

24 MR. PIXTON: Objection. Form.

25 THE WITNESS: Omitted variables bias is a

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1       involved in were particularly narrow, but I don't  
2       know out of all possible situations.

3       BY MR. McNAMARA:

4           Q. Tell me the narrowest class action you  
5       could think of here that would not have the same  
6       issues regarding customer preference.

7           MR. PIXTON: Object to the form.

8           THE WITNESS: You would have to have  
9       something that is pretty limited, basically  
10      purchased in the same channels and similar channels  
11      with similar vehicles, and I can't think of any  
12      class actions that have had that characteristic  
13      but, again, my experience is limited to the ones  
14      I've been involved in.

15       BY MR. McNAMARA:

16           Q. I'm going to dare to try. Let's  
17      assume you could buy a Tesla model A. It's the  
18      only version of Tesla they have. There's no  
19      differences in trim. There's no difference in  
20      model year. It's all the same componentry and  
21      you can only buy it directly from Tesla but it  
22      has a defect. Is that a class action that  
23      Lorin Hitt would say you could do a damages  
24      model for?

25           MR. PIXTON: Object to form.

1                   THE WITNESS: So I don't know if I -- if  
2 I would characterize it that way. I can say, you  
3 know, in a world where one dealer, one vehicle, no  
4 price negotiation, you're more in a world there --  
5 in general, Tesla doesn't negotiate. So you might  
6 be in a world where it's more possible to put all  
7 those vehicles in the same market and, therefore,  
8 you could do something more general but, you know,  
9 without having seen the model and the approach, I  
10 can't be sure.

11 BY MR. McNAMARA:

12                   Q. Wouldn't you still have heterogeneity  
13 in the preference of the customers? Some would  
14 still value, you know, the pick some parts of  
15 that one model Tesla differently than others?

16                   MR. PIXTON: Form.

17                   THE WITNESS: Potentially. That could be  
18 an empirical question.

19 BY MR. McNAMARA:

20                   Q. Let me get you now to the other issue  
21 you mentioned here in terms of differences in  
22 the customers that Mr. Eichmann -- I'm on 63  
23 now -- incorrectly assumes that all punitive  
24 class members would place significant value on  
25 the transmission feature.

1 question?

2 BY MR. McNAMARA:

3 Q. This is dated October of 2018.

4 A. Yes. That is correct.

5 Q. And you also mention in the paragraph  
6 we just read, 146, that customers may get  
7 information based upon online forums -- forum  
8 comments, that they may have had some  
9 information about the transmission issues from  
10 those online forums. Is that fair?

11 A. Let me go back to my report and I'll  
12 look. What paragraph?

13 Q. 146.

14 A. Okay.

15 Q. Actually, before we go there, let me  
16 go to Exhibit 220. It's also already in your  
17 Exhibit Share. Do you see --

18 A. Yes. There it is at the bottom.

19 Q. This is a reference to another TSB  
20 16-NA-361.

21 A. That's what it appears to be.

22 Q. And it says, also from Mark Gordon,  
23 "Steve, 16-NA-361 applies only to the 8-speed  
24 transmission. The first 1-2 shift of the day is  
25 influenced by air within the clutch at startup

1 after the vehicle sits for an extended period,  
2 typically overnight."

3 "The harshness is even worse" -- "is  
4 worse on vehicles that are driven at slow speeds  
5 (subdivision) driving during that first shift."

6 Do you see where it says below that  
7 "Engineering has attempted different strategies  
8 with calibration to mask/improve the shift.  
9 Unfortunately, none of these strategies have been  
10 effective and customers continue to experience  
11 harsh 1-2 shift."

12 Do you see that?

13 A. Yes.

14 Q. And then he continues, "Hardware and  
15 calibration changes for the second generation 8  
16 speed will address this and other 8-speed  
17 issues."

18 Did I read that right?

19 MR. PIXTON: Object to the form.

20 THE WITNESS: I believe so.

21 BY MR. McNAMARA:

22 Q. And then it states, "Unfortunately,  
23 these changes will not take place until model  
24 year 2022 for the midsized truck and model 23  
25 for the remaining 8-speed applications."

1                   Do you see that?

2                   MR. PIXTON: Form.

3                   THE WITNESS: Yes, I think that's what it  
4 says.

5 BY MR. McNAMARA:

6                   Q. And then it says "GM confidential"  
7 next to that, right?

8                   MR. PIXTON: Object to the form.

9                   THE WITNESS: That's in parenthesis  
10 following the passage you just read.

11 BY MR. McNAMARA:

12                  Q. Okay. And can do you know what GM  
13 confidential means?

14                  MR. PIXTON: Same objection.

15                  THE WITNESS: I don't have any knowledge  
16 other than the plain language meaning.

17 BY MR. McNAMARA:

18                  Q. I'm going to share screen with you.  
19 Can you -- whoever can, can you change it so  
20 that I can share screens? Can the concierge do  
21 that?

22                  THE VIDEOGRAPHER: You can try now.

23                  MR. McNAMARA: Thank you. While we're  
24 chatting, I went on line and you know what I could  
25 actually find 16-NA-361. This one's dated April of

1       2017. Let me just make sure it's not too far off  
2       from this email. Let me see if I can find a later  
3       one. Oh, that one is from August of 2021.  
4       Terrible version of it. This is what happens when  
5       you do this on the fly, huh?

6                 This is from the Corvette center. It  
7       says 16-NA-361. And I'm scrolling it down with  
8       you. I could be wrong here but let me see, does it  
9       mention anything about we'll have a fix with model  
10      year '23?

11                MR. PIXTON: Object to the form.

12                BY MR. McNAMARA:

13                Q. It doesn't appear, correct?

14                MR. PIXTON: Object to the form.

15                THE WITNESS: At least in the portion  
16       that I can see now, it doesn't. Well, let's see,  
17       what does it say up at the top? Keep going down.

18                BY MR. McNAMARA:

19                Q. It looks like it hasn't been revised  
20       in quite some time?

21                A. Yep.

22                Q. So if -- as of today, do you know if  
23       any current or potential GM buyers of the model  
24       year '15 to oh, heck, '22 vehicles know that a  
25       generation 2 redesign to address harsh shifts is

1 forthcoming?

2 MR. PIXTON: Object to the form.

3 THE WITNESS: I don't know one way or the  
4 other. I think there are places where they're  
5 discussing issues broadly. I don't know if that  
6 particular fact is included in them.

7 BY MR. McNAMARA:

8 Q. So if customers looked at TSBs that  
9 will mention a problem, they will not  
10 necessarily get very much information about the  
11 frequency of the problem, the cause of the  
12 problem and whether -- and when GM will have a  
13 permanent solution to the problem. Is that  
14 fair?

15 MR. PIXTON: Object to the form.

16 THE WITNESS: So this isn't something I  
17 have done an analysis of, about what the content  
18 and what people can infer but in the documents you  
19 showed me, at least within those, they didn't --  
20 none of those specifics were not present on some of  
21 the documents.

22 BY MR. McNAMARA:

23 Q. And you mentioned in your report that  
24 customers -- one of the flaws that Mr. Eichmann  
25 did, is he didn't -- he didn't take into account

1       that persons could get information about these  
2       defects from TSBs, correct?

3                    MR. PIXTON: Object to the form.

4                    THE WITNESS: So that's a little more  
5       narrow reading of my report. My report describes  
6       is that customers could become aware of these  
7       issues from information in the public domain, of  
8       which TSBs is one, and which there were others as  
9       well, and I believe plaintiffs identified the  
10      number of the places where you could find  
11      information.

12     BY MR. McNAMARA:

13                  Q. Right. We identified forums and TSBs  
14      and public information and complaints that says  
15      it's a problem, which probably affects  
16      diminution of value but we didn't know what.

17                  So do you see there's a material  
18      difference between knowing that, hey, there's  
19      transmission issues and exactly what it is and  
20      whether there's a fix and when it might come? Do  
21      you see the difference between those things?

22                  MR. PIXTON: Object to the form.

23                  THE WITNESS: They could potentially be.  
24      That's not something I tried to evaluate in this  
25      case, as to what specific information, beyond the

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1 fact that it was in the public domain was there.

2 So I can't say.

3 You know, from plain language, they are  
4 different information but how consumers react, that  
5 I did not fully investigate except to identify that  
6 it was -- that there was information out there.

7 BY MR. McNAMARA:

8 Q. Okay. Can I ask you to look at  
9 Exhibit 77?

10 And while he's doing that, Solomon, can  
11 you give me a time check?

12 THE VIDEOGRAPHER: One second, please.

13 6:15.

14 BY MR. McNAMARA:

15 Q. Good to know. We will be done by  
16 6:45, if not sooner, my time.

17 So have you looked at Exhibit 77 before?

18 A. Still waiting for the spinning circle.

19 Q. I'm sorry. It should have been in  
20 your folder already. I already put it in there.

21 A. Exhibit?

22 Q. It should say Exhibit 0077. It should  
23 be towards the top.

24 A. There it is, yes.

25 MR. PIXTON: Doug, are you planning to

1 pick back up over here where Mr. Goodrich  
2 conveyed to Tadge and Ms. Briedis, "Due to the  
3 extremely high rate with the midsized truck, we  
4 are expediting the fix in the 238 millimeter  
5 converter for model year '19. However, we have  
6 the supplier working to implement a similar fix  
7 in the larger 258 converter for the Corvette and  
8 other performance vehicles, as well as  
9 full-sized trucks. Timing is still being worked  
10 out but the plan would be to back service all  
11 previous model years once implemented for  
12 production. My expectation is this will likely  
13 a running change for model year '19."

14 Can I now take you to Exhibit 84? It  
15 should be in there but just -- to, again, move  
16 things along, if you want to look at it, you can.  
17 It is in your exhibit share but I'm also sharing it  
18 on the screen.

19 MR. PIXTON: Object to the form.

20 THE WITNESS: Let me look at it briefly.  
21 Sorry. I got -- 84?

22 BY MR. McNAMARA:

23 Q. Yeah.

24 A. Let me look through it and then I'll --  
25 okay.

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1 Q. And if you can, can you review the  
2 answer that Al gives to the question we looked  
3 at in the email, "Al, can you please shed some  
4 light on what's going on with our cars in the A8  
5 torque converter shudder issue and whether there  
6 is any permanent fix to the issue?" Thank you.

7 MR. PIXTON: Object to the form.

8 THE WITNESS: Okay. Got it.

9 BY MR. McNAMARA:

10 Q. Would you agree with me the answer  
11 that's posted here in the forum, there is no  
12 reference to the extremely high warranty rates  
13 that Mr. Goodrich had mentioned?

14 MR. PIXTON: Object to the form.

15 THE WITNESS: So I don't see anything  
16 specifically about warranty rates. I think it's  
17 just describing the fix and the conditions under  
18 which they think the fix is appropriate.

19 BY MR. McNAMARA:

20 Q. Well, is there any mention of the --  
21 the fix that was intended to be in place for  
22 model year 2019 in this post?

23 MR. PIXTON: Object to the form.

24 THE WITNESS: I don't see any -- well,  
25 it's hard to say because I don't know what fluid

1       they would be using. I don't see any reference to  
2       a 2019 fix, though.

3       BY MR. McNAMARA:

4           Q. Well, would you agree with me that, in  
5       fact -- you see here where it says -- not so  
6       much. "Since we started using Dexron HP  
7       transmission fluid in March of 2017, both in  
8       production and for service, we believe we have  
9       basically eliminated the shudder. When used for  
10      service, it only requires a single flush and  
11      fill."

12           Do you see that?

13           MR. PIXTON: Object to the form.

14           THE WITNESS: Yeah. That appears to be  
15       what the text says.

16       BY MR. McNAMARA:

17           Q. And based upon what you know and what  
18       you just read, is that accurate?

19           MR. PIXTON: Object to the form.

20           THE WITNESS: So I'm not in a position to  
21       assess that. I understand they were working on a  
22       solution and they came up with a more permanent fix  
23       later on. That's all I understand. I don't know  
24       what they're specifically referring to here, and  
25       I'm not really in a position to evaluate the

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1       efficacy of their various fixes. I only know  
2       broadly what the history was.

3       BY MR. McNAMARA:

4           Q. Okay. Do you think Mr. Goodrich was  
5       in a position to estimate whether this  
6       information conveyed here was accurate?

7           MR. PIXTON: Object to the form.

8           THE WITNESS: I can't -- I understand  
9       Mr. Goodrich was quite knowledgeable of these  
10      issues, but I can't ex post evaluate what he would  
11      and wouldn't know.

12       BY MR. McNAMARA:

13           Q. My computer just froze.

14           Well, let me take you back to an exhibit  
15      we looked at a little earlier, that of  
16      Mr. Goodrich's testimony. It was Exhibit 3, Tab 3,  
17      and I will try to move this along as quick as  
18      possible. And I'm going to take you there and  
19      we're going to go to page 220 of his testimony.  
20      It's on page 56 of 22 of his transcript.

21           A. Which exhibit number is that?

22           Q. It's Exhibit 3, Tab 3.

23           A. Got it. I see it. Thanks. What page?

24           Q. It looks like it's page 57 of 22 of  
25      his -- of the document.

1           A.     Oh, okay. Got it. Not the deposition  
2       page?

3           Q.     Right. It's 220 of the deposition  
4       page. And do you see here where some guy asks:

5                    "In the -- in Al's answer in Exhibit 84.  
6       If you look at the third paragraph."

7                    "It eliminate most of the shudder  
8       concerns."

9                    "Now, if you go a little further down, do  
10      you see" -- it is the second to last sentence --  
11      "Since we started using Dexron HP transmission  
12      fluid in March 2017, both in production and for  
13      service, we believe we have basically eliminated  
14      the shudder. When used for service, it only  
15      requires a single flush and fill." It looks like I  
16      stuttered there. Some guy objected. He's not  
17      important.

18                  And then the answer says "I think, um, I  
19      don't know what basically eliminate is. It, it we  
20      know it didn't. It wasn't 100 percent. I think  
21      the frequency went down considerably, especially,  
22      um, with the newer vehicles, but that's -- that's  
23      not how I would have worded it."

24                  And I asked "Well, if that were true,  
25      there wouldn't have been a need for Mod.1.A, right?

1 You could have followed up shop on the meetings  
2 with Mr. Baran and Mr. Nitz a long time ago,  
3 correct?"

4 Objection to form.

5 "Yeah, basically eliminated may be a  
6 little, a little optimistic. Again, Camaro was not  
7 seeing a high frequency anyway. But maybe that was  
8 his understanding. I can't speak for Al."

9 So while you're not in a position to  
10 evaluate whether this information put in this  
11 public forum that said that GM had basically  
12 eliminated shudder in 2017 and early 2018, would  
13 you agree that Mr. Goodrich's assessment of that  
14 would be one that it was overly optimistic to say  
15 that after changing the new transmission fluid in  
16 March of 2017, they had basically eliminated  
17 shudder?

18 MR. PIXTON: Object to the form.

19 Misstates.

20 THE WITNESS: I think -- what does he say  
21 specifically? I think he says he wouldn't have  
22 worded it that way. I think that's his actual  
23 language. I don't have any reason to dispute that.

24 BY MR. McNAMARA:

25 Q. So let me go back to your report in

1 paragraph 147.

2                   And, again, this is where you mentioned  
3 the different sources where customers may have  
4 gotten potentially information, different  
5 information about the -- the shudder issues that  
6 could affect -- or the shift or shudder issues that  
7 could affect the vehicles.

8                   If it turns out that GM did not publicly  
9 disclose that it didn't have a fix for the shift  
10 quality until 2023 and that the information in the  
11 TSBs and the forums did not include factual  
12 information about TCC shudder -- TCC shudder, then  
13 what is the point of the individualized inquiry  
14 you're mentioning here in paragraph 147?

15                  MR. PIXTON: Object to the form.

16                  THE WITNESS: So while we reviewed some  
17 certain specific communications, the issue is you  
18 don't know what consumers knew and what opinions  
19 they may have formed about this. Consumers who are  
20 more informed about this were especially concerned  
21 about it could respond by, for example, buying  
22 something else or negotiating harder for these  
23 vehicles.

24                  And so the question is, when faced with a  
25 variety of sources of information, some incomplete,

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1 maybe some were more complete and from different  
2 sources, consumers individually access different  
3 amounts of the information and then they may  
4 respond to them in different ways.

5 And so consumers who saw, for example,  
6 that there might have been an issue and decided to  
7 pursue that further and came to the conclusion that  
8 this might be a problem for them, might be willing  
9 to either -- might be more concerned and pay less  
10 and consumers who are indifferent to it or collect  
11 this information may not be -- may not have been as  
12 affected.

13 But that evaluation is something that  
14 can't be done broadly without looking at what, you  
15 know, consumers know, what they accessed and  
16 different -- this could impact different consumers  
17 in different ways. That's the point.

18 BY MR. McNAMARA:

19 Q. Right. My point is if the actual  
20 information about the defects and if and when  
21 any repairs was never released to the public,  
22 there is no point to do an inquiry to find out  
23 what would have happened to this consumer in the  
24 but-for world if GM did tell the information?  
25 If GM has never publicly disclosed what it knows

1       about the ATF, that there is a fix out there.  
2       If customers show up for it, we have the root  
3       cause and we have the solution if you come on  
4       down, and if GM still has not disclosed to the  
5       public shift quality problems persist and  
6       they're going to until we make a major redesign  
7       in model year '23, what are you talking about  
8       this individual inquiring except maybe they  
9       picked up fragments of information about  
10      transmission issues from different sources?

11                    MR. PIXTON: Object to the form.

12                    THE WITNESS: The question is what  
13        information they had when they were making their  
14        decisions, and certainly this information was being  
15        communicated on forums, which is why GM presumably  
16        responded to it in various ways.

17                    And the issue becomes if one were trying  
18        to make it, for example, a comparison of a  
19        disclosure and what was in the public domain for  
20        doing some kind of -- for using this information  
21        event as an event, for example, in a difference in  
22        difference, that contrast would be something that  
23        would be, you know, important to investigate.

24                    What I'm stating here is simply that some  
25        of this information was in the public domain.

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1 There are examples of it. Maybe conflicting  
2 information, maybe incomplete information, but how  
3 consumers react to that is going to affect what the  
4 prices are that are paid and that may be different  
5 across consumers because different consumers engage  
6 in different seeking information.

7 BY MR. McNAMARA:

8 Q. I think this information is doing a  
9 lot of work here. No information about what GM  
10 had, about its specific defects that it knew,  
11 did it convey to the customers. It gave -- it  
12 has a TSB out there that says, if you have  
13 shudder, come on down. Actually, it doesn't  
14 even go to the customers, it goes to the  
15 dealers. And it has information that's GM  
16 confidential about a major redesign.

17 What you're talking about is fragments of  
18 information customers may have about problems and  
19 if they go on a forum, they're told, we've  
20 eliminated it back three years ago before they had.  
21 Isn't that true?

22 MR. PIXTON: Object to the form.

23 THE WITNESS: I think that -- again, some  
24 of the things that you showed me would be of the  
25 forum where they've made specific statements about

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1       the likelihood that it would be fixed, but there is  
2       information, you know, for example, customers  
3       clearly were discussing this on these forums, and  
4       so it is not required that GM initiate this kind of  
5       information in order for customers to become aware  
6       that there could be an issue, for example.

7                  And my statement is simply that  
8       consumers -- you know, there was discussion of this  
9       in the public domain that would have affected  
10      consumers decision-making and that could affect  
11      some consumers differently than others and the only  
12      way to know is to get an understanding of what  
13      consumers actually knew.

14     BY MR. McNAMARA:

15                  Q.     The only question I have for you about  
16       what you just said is about "GM's obligation."  
17       What did you mean by that?

18                  MR. PIXTON:   Object to the form.

19                  THE WITNESS:   I'm not sure I said "GM's  
20       obligation."   I think GM communicated information.

21     BY MR. McNAMARA:

22                  Q.     Right.

23                  A.     I wouldn't -- again, I'm not attempting  
24       to assess what an appropriate disclosure would be  
25       and whether the communications that they have made

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1 C E R T I F I C A T E

2 I do hereby certify that the aforesaid testimony  
3 was taken before me, pursuant to notice, at the time  
4 and place indicated; that said deponent was by me duly  
5 sworn to tell the truth, the whole truth, and nothing  
6 but the truth; that the testimony of said deponent was  
7 correctly recorded in machine shorthand by me and  
8 thereafter transcribed under my supervision with  
9 computer-aided transcription; that the deposition is a  
10 true and correct record of the testimony given by the  
11 witness; and that I am neither of counsel nor kin to  
12 any party in said action, nor interested in the  
13 outcome thereof.

14 *Nancy J. Martin*

15 \_\_\_\_\_  
16 Nancy J. Martin, RMR, CSR

17  
18 Dated: December 28, 2021

19  
20  
21 (The foregoing certification of this transcript does  
22 not apply to any reproduction of the same by any  
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24 supervision of the certifying shorthand reporter.)

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1 C E R T I F I C A T E

2 I, Monice K. Campbell, a duly  
3 commissioned and licensed court reporter, do hereby  
4 certify: That I reported Volume 2 of the  
5 deposition of the witness, Lorin Moultrie Hitt,  
6 Ph.D., commencing on Wednesday, December 22, 2021,  
7 at 10:10 a.m.;

8 That prior to being examined, the witness  
9 was sworn to testify to the truth. That I  
10 thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript of  
12 said deposition is a complete, true, and accurate  
13 transcription of said shorthand notes.

14 I further certify that I am not a relative or  
15 employee of an attorney or counsel or any of the  
16 parties, nor a relative or employee of an attorney or  
17 counsel involved in said action, nor a person  
18 financially interested in the action.

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22 Monice K. Campbell, CCR, RPR, CRR  
23  
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25